(5)

No. 89-1315

Supreme Court, U.S.
FILED
MAR 12 1991
OFFICE OF THE CLERK

In The Supreme Court
OF THE
United States

OCTOBER TERM, 1989

THE HOSPITAL AUTHORITY OF GWINNETT COUNTY, GEORGIA, Individually and d/b/a GWINNETT AMBULANCE SERVICES,
Petitioner,

v.

R. STANFORD JONES, Administrator of the Estate of WILLIAM HAROLD O'KELLEY, Deceased,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

* HAROLD N. HILL, JR.
HURT, RICHARDSON, GARNER, TODD & CADENHEAD
Suite 1400
999 Peachtree Street, N.E.
Atlanta, Georgia 30309-3999
(404) 870-6210

Attorneys for Petitioner

* Counsel of Record

Of Counsel:

MEADE BURNS
MILTON B. SATCHER
LONG, WEINBERG, ANSLEY & WHEELER
999 Peachtree Street, N.E.
Suite 2700
Atlanta, Georgia 30309
(404) 876-2700

No. 89-1315

In The Supreme Court
OF THE
United States

OCTOBER TERM, 1989

THE HOSPITAL AUTHORITY OF
GWINNETT COUNTY, GEORGIA,
Individually and d/b/a
GWINNETT AMBULANCE SERVICES,

Petitioner,

v.

R. STANFORD JONES, Administrator of the Estate
of WILLIAM HAROLD O'KELLEY, Deceased,

Respondent.

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

SECOND SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

This case is pending on Petition for Writ of Certiorari and this Supplemental Brief is based upon a new decision not previously available, *Pacific Mutual Life Insurance Co. v. Haslip,* U.S. (59 USLW 4157, decided March 4, 1991).*

* For compliance with Rule 29.1 see petition for Writ of Certiorari, p.ii.

In *Haslip*, Chief Justice Rehnquist and all Justices except Justice Scalia (concurring) and Justice Souter (not participating) agreed that in order to satisfy the requirement of due process a punitive damage award must bear an understandable or reasonable relationship to compensatory damages. (No such relationship is required in Georgia and no such relationship exists in this case.)

In the majority opinion in *Haslip, supra*, authored by Justice Blackmun and joined by Chief Justice Rehnquist and Justices White, Marshall and Stevens, heavy emphasis was given, inter alia, to appellate court review of punitive damage awards, including particularly their relationship to compensatory damages. The majority found, approvingly, that the Alabama Supreme Court had applied the factors it set forth in *Green Oil Co. v. Hornsby,* 539 So.2d 218, 223 (1989) (59 USLW 4162). The first of those factors is that there must be a reasonable relationship between harm and punitive damages. To emphasize the importance of this first factor, the majority opinion in *Haslip* states that "The Alabama Supreme Court's post-verdict review ensures that punitive damages awards are not grossly out of proportion to the severity of the offense and have some understandable *relationship to compensatory damages.*" (59 USLW 4162, italics added).

In his concurring opinion, Justice Kennedy found that "A verdict returned by a biased or prejudiced jury no doubt violates due process, and the extreme amount of an award compared to the actual damage inflicted can be some evidence of bias or prejudice in an appropriate case." Justice Kennedy went on to favor the comparison of punitive damages and actual damages to the exclusion of other factors relied upon by the majority (59 USLW 4168).

In the dissent, Justice O'Connor relied upon the fact that the jury instructions in *Haslip* "did not suggest what relation, if any, should exist between the harm caused and the size of the award . . . " (59 USLW 4169) and urged

that the "Green Oil factors" should be given in charge to the jury. The first and foremost of those factors, proportionality, was relied upon by the majority and its principle was found to be exclusive by Justice Kennedy.

The Supreme Court of Georgia, in approving the $1,300,000 punitive award in this case, did not apply the trial or applellate review factors found necessary by the majority in *Haslip*. On the contrary, the Supreme Court of Georgia acknowledged that "this award appears to bear no rational relationship to the extent of the injury . . . " (A-5), saying that lack of such rational relationship was of "no consequence" (A-5), and holding that the "concept of proportionality as a legal limitation on the amount of punitive damages" (A-5) is inapplicable in Georgia when such damages are awarded for deterrence.

Like Justice Kennedy, Georgia says that it recognizes that an "inordinately large deterrence award" may reflect undue passion and prejudice (A-6, fn. 9), but unlike Justice Kennedy and the *Haslip* majority, without the due process proportionality requirement Georgia has no means for determining what is an "inordinately large deterrence award."

In *Green Oil Co. v. Hornsby, supra*, regarding reasonable relationship, the Alabama Supreme Court wrote: "If the actual or likely harm is slight, the [punitive] damages should be relatively small." 539 So.2d at 223 (matter in brackets added). The Georgia Supreme Court could not admit that a comparison should be made between harm and punishment because the patient here received only "slight injuries" (A-5).

Consequently, the plaintiff here sought no actual damages (A-5, fn. 8). Instead, plaintiff was awarded $5,001 in nominal damages against petitioner, but $1,300,000 in punitive damages (A-3). If nominal damages, as opposed to actual damages, are to be compared with punitive damages, the ratio here is over 250 to 1. As the majority noted in *Haslip*, the ratio there (4.2 to 1) "may be close to

the line" (59 USLW 4163). Certainly 250 to 1 is over the line, and $1.3 million in punitive damages for "slight injuries" is clearly erroneous.

Without abandoning the equal protection ground that defendants being punished by criminal fines are afforded more protections than defendants being punished by punitive damages, petitioner respectfully urges that if this Court does not grant plenary review, it should grant the writ and summarily vacate the award of punitive damages in this case, in order to emphasize the importance of the due process requirement of meaningful appellate review of punitive damages.

Respectfully submitted,
*By: /s/ HAROLD N. HILL, JR.
Harold N. Hill, Jr.

Attorney for Petitioner
* Counsel of Record

HURT, RICHARDSON, GARNER,
TODD & CADENHEAD
Suite 1400
999 Peachtree Street, N.E.
Atlanta, Georgia 30309-3999
(404) 870-6210

Of Counsel:

MEADE BURNS
MILTON B. SATCHER
LONG, WEINBERG, ANSLEY & WHEELER
999 Peachtree Street, N.E.
Suite 2700
Atlanta, Georgia 30309
(404) 876-2700